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Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: D.T.E. 01-49: Inquiry into the Promulgation of Rules or the Amendment of Existing Regulations Concerning the Cost of Gas Adjustment Clause

Dear Secretary Cottrell:

On May 15, 2001, the Department of Telecommunications and Energy (the "Department") issued a Notice of Inquiry ("NOI") soliciting comments regarding the promulgation of rules or the amendment of 220 C.M.R. § 6.00 et. seq, Standard Cost of Gas Adjustment Clause ("CGAC"). In response to the Department's NOI, AllEnergy Marketing Company ("AllEnergy"), Division of Energy Resources ("DOER"), Fall River Gas Company and North Attleboro Gas Company("Fall River/North Attleboro"), KeySpan Energy Delivery New England ("KeySpan"), NSTAR Gas Company("NSTAR") and the Attorney General filed comments. The Attorney General welcomes the opportunity to respond to several issues raised by the comments.

AllEnergy, the only gas marketer responding to the Department's solicitation, supports the filing of monthly CGACs. It argues that monthly prices create fewer price distortions that competitive suppliers must overcome. According to AllEnergy, marketers have been "shut out" of the market because of the lag between the time market prices go up and the time the CGACs reflect the price changes. They assert that more frequent filings have another consumer

benefit–less price shock and customer confusion when next year's prices reflect the prior year's deferrals and not market conditions. AllEnergy calls for the application of a simple, formulistic filing to ease and speed preparation and review.

The Local Distribution Companies ("LDCs") filed comments requesting that the Department to establish a requirement that would allow the companies to make an amending CGA filing whenever there is a 5% under or over collection of the seasonal CGA. The Companies also propose that the Department waive the current notice period of ten days and allow the amended CGA become effective in only five days from the date filed. NSTAR suggested that such a filing should include an update of actual costs, an update of gas prices and a revised GAF calculation that would produce no deferred gas costs. NSTAR Comments, p. 4.

In DOER's comment, it requested that the Department require LDCs amend their CGAs whenever there will be an under or over collection of 10% or more, including interest. DOER Comments, pp. 4-5. DOER also recommended that the Department investigate the use of Price Risk Management techniques ("PRM") by the LDCs to protect small default service customers from price volatility during the transition to a competitive market. *Id.*, p. 11. DOER would have the Department investigate the use of financial hedging instruments to limit unexpected price changes to default service customers. DOER recognizes that there are costs and risks associated with PRM and urges that the Department address all the attendant issues. *Id.*, pp. 15-16.

The Attorney General has concerns regarding issues raised by the comments summarized above. As set forth in his Initial Comments, the Attorney General contends that the LDCs have successfully filed amended CGAs, based on an anticipated level of under or over collection,[1] under the Department's current regulations and precedent. The current CGA regulations need not be changed to permit such filings. Furthermore, while amending seasonal CGAs for significant over/under recoveries may appear to benefit both customers and LDCs, there are additional costs associated with interim CGA filings that the Companies would no doubt seek to recover from customers. The Attorney General urges the Department to consider not only the cost to the LDC – preparation of the filings, billing system changes and additional customer service inquiries, but also the administrative costs associated with the review and approval of any amended filings. Because the level of these costs may vary with LDC size and complexity of a filing and not the magnitude of the under/over-collection, the Attorney General requests that the Department continue its current policy of approving amendments to CGA's on a case by case basis.

Should the Department find that amended CGA filings, based on a set threshold of potential deferrals, is appropriate, the Attorney General recommends that the Department establish and incorporate in its regulations a standard filing requirement for CGA amendments setting out data requirements and time line for filing an amended CGA. The standard filing should include details of the expense or revenue item(s) primarily responsible for the under/over-collection, actual period costs incurred to date, actual revenues, estimates of under/over-recovery at the end of the CGA period if the amendment is rejected, estimates of under/over-recovery at the end of the CGA period if the amendment is approved, bill impact analyses for each customer class and copy of the notice to customers of the requested change. In addition, the Department

[1] The Attorney General's concerns regarding the additional costs and administrative burdens associated with amended CGA filings also apply to the AllEnergy proposal for monthly CGA filings.

should not shorten the time between the filing of the amendment and the effective date - anything less than the current ten day period would not provide adequate time for review of the filing by the Department and interested parties.

DOER's request that the Department investigate PRM programs is premature. It also assumes that LDCs have the resources to actively participate in the gas supply and related financial derivatives markets after several years of preparing to exit the supply function. The Department has envisioned an orderly five year transition period and has provided for a review of the status of competition in the third year. *Investigation into the unbundling of all natural gas local distribution companies' services*, D.T.E. 98-32, pp. 7-8. In this docket that the Department urged LDCs to employ capacity managers to provide value to customers and deliver default gas service to non-migrating customers at indexed or floating prices. DTE 98-32-B, pp. 55-60. Companies electing not to enter into portfolio management contracts are required ". . . to justify to the Department why it has foregone this approved concept." *Id*. The retail natural gas market has been open to competition for less than one year[2]. The Attorney General believes PRM and hedged services should be supplied by the competitive market to customers who understand and are willing to accept the associated risks and promised rewards.[3]

DOER also expresses concern regarding unexpected price volatility and its effect on customers. DOER Comments, p. 14. LDCs offer level payment and budget billing options, services that allow customers to know with a degree of certainty what their gas cost will be over a season – thus protecting them from frequently and wildly fluctuating prices.[4] As can be seen from DOER's list of issues to be addressed in the proposed investigation, and its statement that PRM prudence determinations would be difficult, the CGA filings would necessarily involve a more heightened level of review than is currently performed. The Attorney General recommends that the Department defer any investigation into the implementation of PRM until it has determined that the LDCs will be providing default service beyond a transition period.

For the reasons stated above the Attorney General submits that the Department should not

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[2] The Massachusetts natural gas market fully opened to competitive suppliers for all retail customers on November 1, 2000 with the Department's approval of the final enabling sections of the LDC's Terms and Conditions. Bay State Gas Company D.T.E. 00-12 (2000), Berkshire Gas Company, D.T.E. 00-13 (2000), Boston Gas Company D.T.E.00-15 (2000), Colonial Gas Company, D.T.E. 00-16 (2000), Commonwealth Gas Company, D.T.E. 00-17 (2000), Essex Gas Company, D.T.E. 00-18 (2000), Fall River Gas Company, D.T.E. 00-19 (2000), Fitchburg Gas and Electric Light Company, D.T.E. 00-20 and North Attleboro Gas Company, D.T.E. 00-21 (2000)

[3] Unless LDCs are responsible for a portion of the downside risk of any PRM program, the Attorney General is not willing to consider the recovery from default service customers of any costs associated with financial and or sophisticated physical hedging techniques. The sharing of risks is necessary to assure that the LDC has every interest in maximizing benefits for customers, just as margin sharing provides an incentive for companies to maximize benefits to customers.

[4] In any PRM program there is always the potential that falling prices could result in higher costs to customers. DOER Comments, p.15.

institute a formal requirement for more frequent CGA filings nor initiate a PRM investigation at this time.

Sincerely,

Joseph Rogers, Esq.